



## Office of the Attorney General

State of Texas

October 16, 1998

DAN MORALES

ATTORNEY GENERAL

Mr. Hugh W. Davis, Jr.  
Assistant City Attorney  
The City of Fort Worth  
1000 Throckmorton Street  
Fort Worth, Texas 76102-6311

OR98-2448

Dear Mr. Davis:

You have asked whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 118797.

The City of Fort Worth (the "city") received two requests for a variety of information. The requestor seeks the following information:

- (1) personnel files on the former mayor and various employees;
- (2) documents involving a named hearing officer;
- (2) information pertaining to the city's involvement with "Community District Block Grants" or "Community Development Block Grants;"
- (3) police expenditures to or involving other city departments from June 1993 until June 1998;
- (4) expenditures paid to outside law firms to handle or consult on employee lawsuits from 1993 to the present;
- (5) documents pertaining to the duties or responsibilities of the mayor from 1991 to 1995; and
- (6) list of employee lawsuits filed against the city from 1993 to the present, which includes the cause number, employee name, and name of the attorneys of record.

You submitted to this office representative samples of the records at issue.<sup>1</sup> You also state that the city has provided the requestor with records concerning the named hearing officer, so it is our understanding that these records are not at issue.<sup>2</sup> Additionally, you indicate that the city does not have information concerning police expenditures made to or involving other city departments from June 1993 until June 1998. The requestor submitted a brief to this office in which he asserts that he has personal knowledge that the requested police expenditure information exists. We note that the city has an obligation to make a good faith effort to locate requested records. Open Records Decision No. 561 at 8 (1990). If the city is unclear as to what documents the requestor seeks, the city can ask the requestor to clarify his request so that the city can locate the records. Gov't Code § 552.222. However, the city is not obligated to provide information which is not in its possession or that does not exist at the time of the request. Open Records Decision Nos. 561 at 9 (1990) (city does not have to obtain new information), 483 at 2 (1987), 452 at 3 (1986), (open records request applies to information in existence when request is received), 362 at 2 (1983) (city does not have to supply information which does not exist).

Your letter states that the only documents that the city has which are responsive to the request for documents detailing the duties or responsibilities of the mayor from 1991 to 1995 are part of the city code and charter. Although a governmental body is not required to perform legal research for a requestor, Gov't Code § 552.203 (general duties of officer for public information), we note that the city must provide public access to its own code and charter. *See* Gov't Code §§ 552.002 (defining public information), .027(c) ("governmental body shall allow the inspection of information in a book or publication that is made part of, incorporated into, or referred to in a rule or policy of a governmental body"); *see also* Open Records Decision No. 551 at 2-3 (1990) ("it is difficult to conceive of a more open record" than a city ordinance).

The city asserts that the remaining information at issue is protected from disclosure under section 552.103(a) of the Government Code. You inform this office that the requestor is a plaintiff in a lawsuit against the city, and you assert that the requestor "is attempting to circumvent the discovery process via the public information law." We note initially that section 552.103 was designed to protect "a governmental body's position in litigation, in

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<sup>1</sup>We assume that the "representative sample" of records submitted to this office is truly representative of the requested records as a whole. *See* Open Records Decision No. 499 (1988), 497 (1988). Here, we do not address any other requested records to the extent that those records contain substantially different types of information than that submitted to this office.

<sup>2</sup>The requestor, in correspondence to this office, asserts his belief that the city has not provided him with all the requested documents concerning the named hearing examiner. Please note that the only records at issue in this ruling are those that the city has determined are responsive to the request. As the city states that it has released the requested documents concerning the named hearing examiner, it is beyond the scope of this ruling to make a fact determination as to whether the documents already provided to the requestor are sufficient to fulfill this portion of his request. *See* Gov't Code § 552.301(request for attorney general decision).

part, by imposing the necessity that the adverse party develop information through the normal process of discovery.” However, the particular motives of an individual requesting records is generally not part of a section 552.103(a) inquiry, as the Open Records Act does not look to the motives of any particular requestor. Gov’t Code § 552.222 (governmental body may not make general inquiries of requestor). This helps to protect the purpose of the Open Records Act in providing broad access to public information, Gov’t Code § 552.001, because when information is withheld from one individual, that information is likewise protected from all other members of the public. Gov’t Code § 552.007 (prohibiting selective disclosure of information).

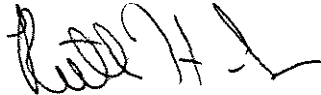
Thus, a governmental body must meet a multi-pronged test to show that particular records are subject to the section 552.103(a) exception. First, the governmental body must show that litigation is reasonably anticipated or that it is pending. *Heard v. Houston Post Co.*, 684 S.W.2d 210, 212 (Tex. App.--Houston [1st Dist.] 1984, writ ref’d n.r.e.); ORD No. 551 at 4. Second, the governmental body must establish how and why the exception is applicable to particular records, by showing the relationship of the subject of the underlying litigation to the records at issue. Open Records Decision No. 638 (1996).

We now address the specific records at issue. As to the request for a list of employee lawsuits that shows cause number, employee name, and attorneys of record, we note that this portion of the request appears to encompass matters of public record, as information filed with a court is generally public and may not be withheld from disclosure. *Star-Telegram, Inc. v. Walker*, 834 S.W.2d 54 (Tex. 1992). Based upon our review of your arguments, the submitted pleadings, and the records themselves, we agree that the personnel files appear to be related to the underlying litigation and may be withheld under section 552.103(a). Also, documents detailing the expenditure of funds paid in connection with this particular litigation appear on their face to be related to the litigation and may be withheld from disclosure under section 552.103(a). In making the determination, we assume the requestor has not previously had access to these documents. No section 552.103(a) interest exists with respect to records that have been seen by all parties to the litigation. Open Records Decision No. 349 (1982), 320 (1982). We also note that the applicability of section 552.103(a) ends once the litigation concludes. Attorney General Opinion MW-575 (1982), Open Records Decision No. 350 (1982).

However, you have not shown how documents pertaining to Community Development Block Grants are related to the litigation. You assert that because the requestor’s discovery requests seek funding information about the city’s Employee Assistance Program, other city funding programs such as the block grants are necessarily related to the litigation. We disagree, and note that if we agreed with this argument, all other city program funding information could be excepted from public disclosure. See Gov’t Code § 552.022(3) (providing that information relating to expenditure of public funds is generally public). You also have not shown how expenditures pertaining to other employee lawsuits are related to this litigation. Thus, this information must be released.

We are resolving this matter with an informal letter ruling rather than with a published open records decision. This ruling is limited to the particular records at issue under the facts presented to us in this request and should not be relied upon as a previous determination regarding any other records. If you have questions about this ruling, please contact our office.

Yours very truly,

A handwritten signature in black ink, appearing to read 'Ruth H. Soucy', with a stylized flourish at the end.

Ruth H. Soucy  
Assistant Attorney General  
Open Records Division

RHS/ch

Ref: ID# 118797

Enclosures: Submitted documents

cc: Mr. Larry Schoolcraft